

E-FILED 01-19-2011

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALFRED R. MONTANO, MARY R.
MONTANO,

No. C10-01536 HRL

Plaintiffs,

ORDER DISMISSING CASE

v.

AMERICAN HOME MORTGAGE CORP. dba
AMERICAN BROKERS CONDUIT, et al.,

Defendants.

Plaintiffs filed this suit in February 2010 for alleged violations of federal and state law in connection with their home mortgage. The matter subsequently was removed¹ here and has been continued several times because the court is informed that the parties have been discussing a possible loan modification, which might resolve this case.

At the third case management conference, held on November 16, 2010, plaintiffs stated that they would dismiss this action in order to allow the loan modification negotiations to proceed more quickly. (Plaintiffs' counsel previously suggested that the parties should deal with one another directly, rather than through litigation counsel, with respect to the potential loan modification. Defendants, however, were unwilling to do so while this lawsuit remained

¹ The record indicates that none of the defendants have been formally served with the summons and complaint. (See Docket No. 1, Notice of Removal at 3). However, plaintiffs and all defendants who have appeared before the court have consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned. 28 U.S.C. § 636(c); FED. R. CIV. P. 73.

1 pending). The only question was whether defendants would agree to waive any fees and costs
2 incurred. The matter was then continued to January 11, 2011 for a further case management
3 conference, to allow defense counsel time to confer with his clients. Assuming the case was not
4 dismissed, the parties were directed to file an updated status report by January 4, 2011.

5 No dismissal was filed. And, although no updated status report was filed either, this
6 court held a further case management conference on January 11, 2011. Defendants appeared at
7 that conference and advised that they agree to a dismissal, with the parties to bear their own fees
8 and costs. They further stated that they informed plaintiffs of that agreement several weeks
9 beforehand. Plaintiffs, however, failed to appear at the conference. And, as noted above, no
10 dismissal was filed. This court then issued an order directing plaintiffs' counsel to appear and
11 show cause why this case should not be dismissed.

12 Plaintiffs' counsel failed to appear as ordered. He instead filed a written response to the
13 show cause order, stating that his clients have been ignoring his correspondence.

14 This matter has been pending for nearly one year, during which time no significant
15 activity has occurred in the litigation—and indeed, both sides have disclaimed any interest in
16 proceeding with the lawsuit while the loan modification discussions continue. Accordingly, this
17 court finds that plaintiffs have not shown good cause in response to its January 11, 2011 order.
18 And, because this court is informed that dismissal may help to expedite the progress of
19 plaintiffs' loan modification negotiations, this case is hereby dismissed without prejudice, each
20 side to bear its own fees and costs.

21 The clerk shall close the file.

22 SO ORDERED.

23 Dated: January 19, 2011

24 
25 HOWARD R. LLOYD
26 UNITED STATES MAGISTRATE JUDGE
27
28

1 5:10-cv-01536-HRL Notice has been electronically mailed to:

2 Robert Betuel Norum bnorum@wrightlegal.net

3 T. Robert Finlay rfinlay@wrightlegal.net, ggrant@wrightlegal.net

4 William Blackford Look , Jr look_mtr@sbcglobal.net, look_crml@montereybay.com

5 Counsel are responsible for distributing copies of this document to co-counsel who have not
6 registered for e-filing under the court's CM/ECF program.